IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11693 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL MUSEKHAN (ELDER BROTHER OF DETENU NAWABKHAN @

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 11693 of 2001

MR BB NAIK for the petitioner.

MR ANANT S DAVE for Respondents No. 1 & 2.

GOVERNMENT PLEADER for Respondents No. 3 & 4.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/02/2002

ORAL JUDGEMENT

1. An order came to be passed by Joint Secretary, Government of India, Ministry of Finance, Department of Revenue, in exercise of powers under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and

Psychotropic Substances Act, 1988 ("PITNDPS Act" for short), detaining Nawabkhan @ Akbar Khan under the provisions of the said Act. The order was passed on the 24th January, 2001.

2. The grounds of detention indicate that the detenu was found to be involved in illicit trafficking of narcotic drugs and psychotropic substances. A vehicle bearing No.RJ-19-G-3970 was found to be carrying brown sugar when it was intercepted on 25.7.2000 at about 22.15 hours. The detenu was occupying the cabin of the said truck and he also happens to be the owner of the said truck. On such packets wrapped in yellow paper were found containing brown sugar, after following requirements of NDPS Act, investigation was done and the detenu was arrested. The charge sheet is filed, the prosecution is yet not completed and the case is awaiting trial.

2.1 A case was made out for detention under PITNDPS Act by the sponsoring authority and the detaining authority, after considering the papers, passed the impugned order on the 24th January, 2001. The said order was executed on the detenu while he was in custody. The petition challenges the said order on various grounds.

3. Learned advocate Mr. Naik appearing for the petitioner has mainly raised the following contentions:-

(1) The detenu knows only Hindi language and he is not supplied with a number of documents in Hindi language.

(2) The detaining authority has placed reliance on the statements of the detenu as well as other persons recorded under Section 67 of the NDPS Act. The said statements, though relied upon by the detaining authority, have not been supplied to the detenu till date.

(3) The detenu was in judicial custody when the order was passed. The detaining authority was aware of this fact. Still the detaining authority observed that there is every likelihood of the detenu filing bail application and also of the likelihood of his being released on bail by the Court and, on such release, his likelihood of engaging himself in illicit trafficking of narcotic drugs and, therefore, he is required to be immediately detained. Mr. Naik submitted that in absence of bail application or any order

in this regard, such satisfaction could not have been recorded by the authority in light of the decision in the case of Amritlal v. Union of India, AIR 2000 SC 3675.

4. The petition is opposed to by learned Additional Standing Counsel for the Central Government Mr. Dave on behalf of respondents No.1 and 2 and learned Assistant Government Pleader Mr. Patel on behalf of respondents No.3 and 4. An affidavit-in-reply on behalf of respondents No.1 and 2 is also filed.

5. Having regard to the contentions raised before this Court, it requires to be noted that the detaining authority in paragraphs 6 and 7 of the grounds of detention very clearly referred to the statements of detenu and Bawal, son of Musekhan Mangalia recorded during the course of investigation under section 67 of the NDPS Act, 1985. The contents of these statements are also considered. However, these statements are not supplied to the detenu along with the grounds of detention, as factually not disputed by the respondents. If the authority has relied on these documents, they ought to have been supplied to the detenu along with the grounds of detention. Non-supply of these documents can be said to have been infringed the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution of India, which would vitiate the detention and the continued detention. In this regard, the decision of this Court in Israil @ Israr Pahelvan Nasirahmed Sheikh v. State of Gujarat & Ors, 2000(1) G.L.H. 122 can be profitably referred to.

6. So far as the non-supply of documents in Hindi language is concerned, it is also not in dispute that several documents are not supplied to the detenu in Hindi language. It is vehemently contended that the detenu knows only Hindi language or only the Devnagari script. Non-supply of relevant documents in a language known to the detenu would adversely affect his right of making an effective representation guaranteed by the Constitution and his detention/continued detention would be vitiated.

7. It would be very relevant and pertinent to note that the detenu was in judicial custody when the order was passed and executed. The detaining authority was conscious about this aspect, if the grounds of detention are perused (paragraph 8 of the grounds of detention). The detaining authority has, however, observed in paragraph 12 that the detenu, though in judicial custody, is likely to file bail application and is likely to be

released on bail and is likely to engage himself in illicit trafficking of narcotic drugs. There is no material whatsoever except an inference about preferring the application and getting bailed out on record to support these observations. In the case of Amritlal v. Union of India, AIR 2000 SC 3675, the apex Court has drawn a distinction between likelihood of detenu moving an application for bail and likelihood to be released on bail. The Apex Court observed that likelihood of detenu moving an application for bail is not sufficient. The Apex Court observed that there must be cogent material before the officer passing a detention order that the detenu is likely to be released on bail. The inference must be drawn from available material on record and must not be the ipsi dixi of the office passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. In view of these observations and in view of the fact that the detenu was in judicial custody in connection with an offence punishable under the provisions of NDPS Act, the satisfaction for the immediate need for exercise of powers under Section 3 of the PITNDPS Act could not have been passed.

8. The petition deserves to be allowed for the foregoing reasons and the same is allowed. The impugned order of detention dated the 24th January, 2001, passed against the detenu is hereby quashed and set aside. Rule is made absolute with no orders as to costs.

9. It is stated at the Bar by learned advocate Mr. Naik that the detenu has been released from detention on completion of the period of detention and, as such, no directions in this regard are, therefore, given.

[A.L. DAVE, J.]

gt